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FISCAL IMPACT REPORT

SPONSOR Taylor DATE TYPED 2/25/05 HB _____

SHORT TITLE Flying While Intoxicated Act SB 954

ANALYST Wilson

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
			Minimal		

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY05	FY06			
		\$0.1		

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)

Attorney General's Office (AGO)

Corrections Department (CD)

Department of Public Safety (DPS)

Public Defender Department (PDD)

SUMMARY

Synopsis of Bill

Senate Bill 954 enacts the Flying While Intoxicated Act (FWIA) and prescribes penalties for operating an aircraft while under the influence of alcohol or drugs. The bill authorizes testing of a person's blood or breath for alcohol or drugs and reporting findings to the Federal Aviation Administration. Enacting this bill will make it a crime for anyone to fly an aircraft while under the influence of alcohol or drugs.

This bill makes it unlawful for a person to operate an aircraft when a person is under the influence of intoxicating liquor, the person is under the influence of any drug to a degree that renders him incapable of safely operating an aircraft or the person has an alcohol concentration of .02 or more in his blood or breath. A first conviction imposes a sentence of 90 days or less in jail or a fine of \$500 or less, or both. A second or subsequent conviction requires a sentence of 364 days or less in jail or a fine of \$750 or less, or both.

This bill does not allow any municipal or county ordinance prohibiting the operation of an aircraft while under the influence of intoxicating liquor or drugs shall be enacted that provides for a different unlawful alcohol concentration level.

Only specific medical personnel are qualified to withdraw blood in the performance of a blood-alcohol or drug test. These same individuals are relieved from civil and criminal liability as a result of such blood withdrawal in this act.

This bill provides that a person who operates an aircraft within this state shall be deemed to have given consent to chemical tests of blood or breath or both. A person who is dead, unconscious or otherwise incapable of refusal shall be deemed not to have withdrawn the consent provided by the FWIA.

Under the act, only authorized persons shall withdraw blood, but this limitation does not apply to the taking of breath samples. The agency represented by the law enforcement officer at whose direction the chemical test is performed shall pay for the chemical test, even where a person wishes to have the test performed upon him be a person of his own choosing.

The bill provides that a law enforcement officer shall report to the FAA the name of a person and the result of that person's chemical test administered pursuant to the Act, or the name of a person who refused to submit to a chemical test under the Act. The bill also provides that if a person is convicted of operating an aircraft while under the influence of intoxicating liquor or drugs, a report of the conviction shall be forwarded to the FAA by the court in which the conviction occurred.

The bill amends Section 24-1-22 NMSA to provide that testing techniques or methods promulgated and approved by the department of health apply to those believed to be operating an aircraft under the influence as well as a motor vehicle.

Significant Issues

The DPS states congress has preempted navigable airspace by virtue of its constitutional power. The United States Government has exclusive sovereignty of the airspace of the United States. As such, application of a state drug and alcohol testing statute to pilots is preempted by the Federal Aviation Act even when the state law is consistent with the objectives of federal law. Additionally, only the FAA Administrator has the discretion to determine what devices fall within the definition of an "aircraft." Lastly, implied consent is a civil matter and is tied to licensing in New Mexico. The FAA regulates who flies.

The AGO indicates this bill is similar to the DWI law for operation of a motor vehicle. There are several differences. The "legal limit" in this bill is .02. The legal limit in the DWI statute is .08. The DWI law lists penalties for up to seven time offenders. This bill has penalty provisions for

up to second time offenders. This bill directs that the person arrested shall be advised that failure to submit to a chemical test for the presence of drugs or alcohol could result in increased penalties. The current DWI law does not have that provision. This bill provides for a rebuttable presumption for persons found to have a blood alcohol content of .02. In the DWI statute there is no rebuttable presumption for persons found to have a blood alcohol content of .08. A person with a blood alcohol content of .08 under the DWI statute is per se guilty.

FISCAL IMPLICATIONS

The AOC will receive the balances in the crime laboratory fund collected pursuant to the act and will pay these funds to the scientific laboratory division of the Department of Health (DOH) upon invoice.

There will be a minimal administrative cost for statewide update, distribution, and documentation of statutory changes. Any additional fiscal impact on the judiciary will be proportional to the enforcement of this law and commenced prosecutions. New laws, amendments to existing laws, and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

ADMINISTRATIVE IMPLICATIONS

DPS notes notwithstanding the federal preemption, enforcement will likely be problematic and require additional equipment, manpower and training of law enforcement officers to recognize, apprehend and process suspects.

DOH shall establish criteria and specifications for equipment, training, quality control, testing methodology, blood-breath relationships and the certification of operators, instructors and collectors of breath samples.

DW/yr